

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

FILED

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U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEP. CLERK

AMERICAN CIVIL LIBERTIES UNION OF)
TENNESSEE; THOMAS E. BIBLER and)
NANCY A. BIBLER; JOSEF A. DAVIDSON;)
C. BRAD GUAGNINI; ROLAND JOHNSON, JR.;)
WILLIAM DAVID JONES; TRACY KNAUSS and)
DONNA KNAUSS; JOHN W. MINGUS, SR.;)
PHILIP M. POSNER; ROBERT H. SISKIN and)
PRISCILLA SISKIN; and MELANIE MOREL)
SULLIVAN,)

Plaintiffs,

v.)

No. 1:02-cv-026

Edgar / Carter

HAMILTON COUNTY, TENNESSEE; THE)
COUNTY COMMISSION OF HAMILTON)
COUNTY and FRED R. SKILLERN, RICHARD)
CASAVANT, CHARLOTTE E. VANDERGRIF,)
WILLIAM R. COTTON, JR., JOANNE H.)
FAVORS, BEN F. MILLER, JR., HAROLD R.)
COKER, CURTIS D. ADAMS, and BILL)
HULLANDER, in their official capacities as County)
Commissioners of Hamilton County, Tennessee,)

Defendants.

MEMORANDUM OPINION

This case is now before the Court on the plaintiffs' application [Court File No. 32] for attorney's fees, expenses, and costs. This Court has entered judgment for the plaintiffs ordering removal of Ten Commandments displays in the Hamilton County Courthouse and the Hamilton County City Courts Building. Since plaintiffs American Civil Liberties Union of Tennessee ("A.C.L.U. of Tennessee"), Tracy Knauss, and Philip M. Posner are prevailing parties, this Court, in its discretion, may award these plaintiffs reasonable attorney's fees and expenses under 42 U.S.C. § 1988. Costs may be awarded under 28 U.S.C. § 1920.

As this Court recently observed in *Doe v. Porter*, No. 1:01-cv-115 (slip op. E.D. Tenn. May 24, 2002), the over-arching requirement of an attorney's fee award is that it must be reasonable. A reasonable fee is one that is adequate enough to attract competent counsel, but does not produce a windfall for lawyers. *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 1999); *Hadix v. Johnson*, 65 F.3d 532, 535 (6th Cir. 1995). The methodology for ascertaining a reasonable fee is to determine a "lodestar" amount whereby the Court determines a reasonable rate of compensation for the attorneys and multiplies that rate by the number of hours spent on the litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Adcock-Ladd v. Secretary of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000). This amount may then be adjusted by the factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). See *Adcock-Ladd*, 227 F.2d 3d at 349.¹

Reasonable Rate

A reasonable hourly rate is determined by the "market rates for the services rendered." *Hadix*, 65 F.3d 536. Those market rates are derived from the "[rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Id.* (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)). Plaintiffs have submitted their own affidavits as well as that of one other attorney to show that their claimed hourly rate of \$250.00 is within the range of reasonable rates for attorneys representing plaintiffs in this type of case. However, this Court recently

¹ These factors are: "(1) the time and labor required by a given case; (2) the novelty and difficulty of the questions presented; (3) the skill needed to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Adcock-Ladd*, 227 F.3d at 349 n.8.

concluded in *Doe v. Porter*, a similar First Amendment civil rights case, that \$200.00 per hour is the prevailing rate for attorneys in this type of case in this locality. This Court, in setting a reasonable hourly rate, may consider awards in similar cases. *Adcock-Ladd*, 227 F.3d at 349 n.8. In this case, the Court determines that \$200.00 per hour is a reasonable hourly rate for compensating plaintiffs' attorneys.

Hours

The attorneys for plaintiffs have submitted a detailed accounting of the time they spent on this case. The total number of hours expended by plaintiffs' attorneys is 192.2. Defendants claim that there was some duplication of effort and that some of the plaintiffs' attorneys' work was unnecessary. However, this Court has examined the plaintiffs' attorneys' time records and concludes that they handled this case efficiently. Therefore, no reduction will be made.

The Court will reduce plaintiffs' Nashville counsel's claim by 16 hours because the case could have been handled by Chattanooga counsel. While recognizing that under appropriate circumstances courts may award attorney's fees for travel time, such an award would not be appropriate in this case. This is consistent with this Court's decision in *Doe v. Porter*.

Defendants argue that because this Court determined that many of the plaintiffs lacked standing, and because the Court determined that no plaintiff had standing to challenge the Ten Commandments posting at the Juvenile Courts Building, the plaintiffs achieved only "limited success." See *Hensley v. Eckerhart*, 461 U.S. 424 (1983). The plaintiffs were indeed successful in securing a judgment requiring removal of Ten Commandment plaques in two of the three buildings in which they were posted. They also succeeded in establishing the legal principles that made it clear, had there been standing, that the plaques in the third building (the Juvenile Courts Building) would also have been

subject to this Court's removal order.² Since the plaintiffs' success was not limited, no reduction in plaintiffs' attorney's fees will be made on this ground.

Costs

Plaintiffs claim reimbursement for court costs under 28 U.S.C. § 1920 in the total amount of \$2,683.68. These costs are reasonable and appropriate. Therefore, they may be recovered by the plaintiffs.

Summary - Conclusion

Plaintiffs A.C.L.U. of Tennessee, Tracy Knauss, and Philip M. Posner are entitled to recover their reasonable attorney's fees and costs as follows:

Attorney's Fees	192.2 hours x \$200.00 per hour	=	\$38,440.00
LESS travel time	16 hours x \$200.00 per hour	=	- \$ 3,200.00
	Total Attorney's Fees		\$35,240.00
Court Costs			\$ 2,683.68
	TOTAL		\$37,923.68

JUDGMENT will enter.



R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE

² The defendants did indeed remove the plaques from all three buildings in which they were posted.